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12 United States of America

13 UNITED STATES DISTRICT COURT

14 SOUTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA, ) Criminal Case No. 08-CR-1637-WQH  
16 v. )  
17 Plaintiff, ) DATE: July 7, 2008  
18 ) TIME: 2:00 p.m.  
19 BENJAMIN OCHOA-RAMIREZ, )  
20 Defendant. ) **UNITED STATES' NOTICE OF MOTION  
21**  AND MOTION FOR RECIPROCAL  
22 DISCOVERY  
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17 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,  
18 Karen P. Hewitt, United States Attorney, and David D. Leshner, Assistant United States Attorney, and  
19 hereby files its motion for reciprocal discovery. Said motion is based upon the files and records of this  
20 case together with the attached memorandum of points and authorities.

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1                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2                   **I**

3                   **STATEMENT OF THE CASE**

4                   On May 27, 2008, defendant Benjamin Ochoa-Ramirez was arraigned on a two-count  
5 Indictment charging him with importation of marijuana and possession of marijuana with intent to  
6 distribute, in violation of 21 U.S.C. §§ 841(a)(1), 952 and 960. Defendant entered a plea of not guilty.

7                   **II**

8                   **STATEMENT OF FACTS**

9                   **A.     Defendant's Apprehension**

10                  On May 11, 2008, Defendant entered the United States from Mexico through the Calexico, CA  
11 West Port of Entry as the driver and sole occupant of a 1999 Ford Windstar. At primary inspection,  
12 CBP Officer W. Gerhart noticed that Defendant's hand was shaking when Defendant provided his  
13 border crosser card and that Defendant avoided eye contact during their encounter. In response to  
14 Officer Gerhart's questioning, Defendant asserted that the vehicle belonged to "a friend." Officer  
15 Gerhart observed that the glove compartment contained only the vehicle registration and was otherwise  
16 empty. Further, there was only one key on the ignition ring. Based on these observations, Officer  
17 Gerhart elected to refer Defendant's vehicle to secondary inspection.

18                  At secondary inspection, CBP Officer L. Parker observed Defendant's nervous demeanor.  
19 Defendant informed Officer Parker that the vehicle belonged to a friend and that he was en route to a  
20 swap meet.

21                  A narcotic and human detector dog alerted to the right side rear quarter panel of the vehicle.  
22 Subsequent inspection revealed 50 packages of marijuana concealed throughout the vehicle. The total  
23 weight of the marijuana was approximately 50.58 kilograms.

24                  **B.     Defendant's Post-Arrest Statement**

25                  Defendant received Miranda warnings and agreed to make a statement. He denied knowledge  
26 of the marijuana in the vehicle. According to Defendant, he was to be paid 200 pesos to pick up  
27 someone at the Santo Thomas swap meet. Defendant further stated that he had crossed the vehicle into  
28 the United States on two prior occasions.

III

**MOTION FOR RECIPROCAL DISCOVERY**

3 The Government has and will continue to fully comply with its discovery obligations. To  
4 date, the Government has provided Defendant with 37 pages of discovery, including reports of his arrest,  
5 photographs of the vehicle and a DVD of his post-arrest statement.

6 The Government moves the Court to order Defendant to provide all reciprocal discovery to  
7 which the Government is entitled under Federal Rules of Criminal Procedure 16(b) and 26.2.  
8 Specifically, Rule 16(b)(1) requires Defendant to disclose to the Government all exhibits, documents  
9 and reports of testing or examination which he intends to use in his case-in-chief at trial and a written  
10 summary of the names, anticipated testimony, and bases for opinions of experts he intends to call at trial  
11 under Rules 702, 703, and 705 of the Federal Rules of Evidence.

IV

## **CONCLUSION**

14 For the foregoing reasons, the Government respectfully requests that the Court grant its motion.

16 || DATED: June 10, 2008.

Respectfully submitted,

Karen P. Hewitt  
United States Attorney

s/ David D. Leshner  
DAVID D. LESHNER  
Assistant U.S. Attorney

Attorneys for Plaintiff  
United States of America

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Case No. 08-CR-1637-WQH  
Plaintiff, )  
v. )  
BENJAMIN OCHOA-RAMIREZ, ) CERTIFICATE OF SERVICE  
Defendant. )

## CERTIFICATE OF SERVICE

**IT IS HEREBY CERTIFIED THAT:**

10 I, DAVID D. LESHNER, am a citizen of the United States and am at least eighteen years of age.  
11 My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **UNITED STATES'**  
**NOTICE OF MOTION AND MOTION FOR RECIPROCAL DISCOVERY** on the following  
parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System,  
which electronically notifies them.

Hanni Fakhoury, Esq.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2008.

/s/ David D. Leshner  
**DAVID D. LESHNER**